

### **Remarks and Arguments**

Claims 1-31 are pending in this case. Claims 1,5, 9, 20, 24 and 27-31 have been amended herein to particularly point out the invention. In addition, claims 14-17, 22, 23, and 26 have been amended to merely correct a typographical error. Support for these amendments can be found in the specification on page 15, lines 18-23; page 23, lines 26-30. New claims 31-32 have been added to particularly point out the invention. Support for these claims is founding the specification on pages 5, lines 11-15; page 14, 16-33; page 24, lines 19-34; page 29, lines 1-5 as well as in U.S. patent application 09/991,235 (see page 13, lines 16-31; page 16,line 24-page 17, line 6), which this application claims priority to and, which is incorporated in its entirety by reference on page 1, lines 1-5.

### **Claim Objections**

Claim 30 is objected to because the word method is misspelled. Applicant has amended the claim to correct this typographical error.

Claim 9 is objected to because it allegedly fails to further limit the subject matter of a previous claim. The Office alleges that coatings of stents can be either non-polymeric or polymeric, as well as either hydrophyllic or hydrophobic, but, according to the Office, they all must be biocompatible if they are to be used as stent coatings. Without acquiescing in the objection, and for the sole purpose of expediting prosecution, Applicant has amended claim 9 to recite that the carrier component is biodegradable. Additionally, Applicant has deleted the term "biodegradable" from claim 1. Applicant believes that the objection is thus obviated.

### **35 U.S.C. § 112**

Claims 2 and 31 stand rejected under 35 U.S.C. § 112 first paragraph as allegedly failing to comply with the written description requirement. According to the Office, the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the application was filed, had possession of the claimed invention. Specifically, the

Office alleges that the specification fails to suggest any treatment assembly comprising a stent and a catheter which have been coupled.

Applicant respectfully traverses this rejection. The specification states on page 6, lines 22-26: "In another aspect the invention can include a coated stent, comprising a stent and a coating composition comprising a biologically active component and a biodegradable carrier component which may have a melting point of about 50° C or less, and a catheter which can be coupled to the coated stent to form a treatment assembly (emphasis added). Applicant submits that the specification does suggest a treatment assembly comprising a stent and a catheter and thus demonstrates that the Applicant was indeed in possession of the claimed invention at the time the application was filed. Applicant respectfully requests withdrawal of the rejection.

Claim 20 stands rejected under 35 U.S.C. § 112 second paragraph as allegedly indefinite. The Office believes that it is unclear what is being claimed and requests clarification. Without acquiescing in the rejection, and for the sole purpose of expediting prosecution Applicant has amended claim 20 to recite: "The coated stent of claim 1, wherein the stent comprises struts and the struts comprise capillaries, grooves and channels engraved in the struts." Applicants believe the amendment obviates the rejection.

### **35 U.S.C. § 102**

Claims 1, 3-5, 7-11, 17-29 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by European Patent Application No: Ep 0 734 721 (hereinafter "'721"). The Office believes '721 suggests multi-layered coatings for stents made from biodegradable polymers such as polylactide. The Office alleges that polymers such as polylactide fall within the scope of the pending claims because they possess melting points and viscosity profiles as recited in the claims. The Office further alleges that '721 discloses the use of HMG-CoA reductase inhibitors and other antiproliferative agents, as well as the use of porosogens in stent coatings

Without acquiescing in the rejection, and for the sole purpose of expediting prosecution, Applicant has amended claim 1 to recite: the coating composition comprises from 50-99.9% by weight of a carrier component. The '721 application does

not teach a stent with a coating composition comprising from 50-99.9% by weight of a carrier component. Claims 24 and 27-31 have been similarly amended. Applicant believes these amendments obviate the rejection.

### **Conclusion**

The amendments to the claims, as set forth herein, including the addition or cancellation of any claims, have been offered to advance this application to issue. None of the amendments made herein should be construed as an admission that the subject matter of the claims, as originally filed, is anticipated by or made obvious in light of any art of record whether considered singularly or in combination. Applicant respectfully reserves the right to pursue the originally filed claims in another co-pending application without being prejudiced by any amendments, including cancellation of claims, made herein.

Applicant believes all claims are in allowable condition. A notice of allowance for this application is earnestly solicited. If the Examiner has any questions regarding this amendment, the Examiner is invited to call Applicant's attorney at the number listed below. The Examiner is hereby authorized to charge any fees or credit any balances under 37 CFR §§1.16 and 1.17 to Deposit Account No. 02-3038.

Respectfully submitted

E. Stewart Mittler  
E. Stewart Mittler, Esq. Reg. No. 50,316  
KUDIRKA & JOBSE, LLP  
Customer Number 021127  
Tel: (617) 367-4600 Fax: (617) 367-4656

Date: 3/14/05